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## 2009 Decisions

Opinions of the United  
States Court of Appeals  
for the Third Circuit

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5-1-2009

## Dana Moss v. USA

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 08-4739

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DANA LYNN MOSS,  
Appellant

v.

UNITED STATES OF AMERICA; STATE OF NEW JERSEY

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On Appeal from the United States District Court  
for the District of New Jersey  
(D.C. Civil No. 08-cv-4178)  
District Judge: Honorable Joel A. Pisano

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Submitted for Possible Summary Action Pursuant to  
Third Circuit LAR 27.4 and I.O.P. 10.6  
April 9, 2009

Before: RENDELL, HARDIMAN and ALDISERT, Circuit Judges

(Opinion filed: May 1, 2009)

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OPINION

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PER CURIAM

Dana Moss, proceeding pro se, appeals the decision of the District Court dismissing her complaint with prejudice for failure to comply with Rule 8(a) of the Federal Rules of Civil Procedure. Because the appeal does not present a substantial

question, we will summarily affirm. See 3d Cir. LAR 27.4; 3d Cir. IOP 10.6.

## I

In August 2008, Moss filed in the District Court a six-page handwritten complaint. The District Court determined, sua sponte, that the complaint fails to meet the “short and plain statement” requirement of Fed. R. Civ. P. 8(a) because it is “largely illegible, incomprehensible, and confusing.” On September 30, 2008, the Court dismissed the complaint without prejudice to Moss’s filing an amended complaint within thirty days. See Simmons v. Abruzzo, 49 F.3d 83, 86-87 (2d Cir. 1995).

In October 2008, Moss filed a “Motion for Emergent Relief, and Injunctive Relief.” The three-page handwritten motion, though more legible than Moss’s complaint, does not actually assert a cognizable claim for relief. As Moss filed no other submissions during the thirty-day period, the District Court construed her motion as an amended complaint and dismissed it with prejudice for failing to comply with Rule 8(a)’s “short and plain statement” requirement. Moss filed a timely notice of appeal. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for abuse of discretion. See In re: Westinghouse Sec. Litig., 90 F.3d 696, 702 (3d Cir. 1996).

## II

When a district court is presented with a confusing and/or illegible complaint, the court may not dismiss the complaint pursuant to Rule 8(a) without first giving the litigant an opportunity to amend the defective pleading. See Simmons, 49 F.3d at 86-87.

Cognizant of this duty, the District Court appropriately afforded Moss an opportunity to conform her complaint to the requirements of Rule 8(a). She failed to do so and offers no reason to question the District Court's resolution of the matter.

On appeal, Moss has filed two responses to the Court's letter informing her that her appeal was submitted for possible summary action. In her more than 800 pages of filings, however, Moss has provided no basis for concluding that the District Court erred in any way. At most, her responses can be understood as a challenge to what appears to be a decision of the United States District Court for the District of New Hampshire in an unrelated case. Accordingly, we will affirm the judgment of the District Court.